IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

NO. 321 MISCELLANEOUS

SAMUEL TAYLOR,
Petitioner

VS.

TENNYSON DENNIS, WARDEN,
ALABAMA STATE PENITENTIARY,
KILBY, ALABAMA,
Respondent

BRIEF AND ARGUMENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Petitioner

VS.

TENNYSON DENNIS, WARDEN,
ALABAMA STATE PENITENTIARY,
KILBY, ALABAMA,
Respondent

BRIEF AND ARGUMENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I.

OPINIONS OF THE COURT BELOW

We do not find that the opinion or judgment of the United States District Court for the Middle District of Alabama, Northern Division, rendered on July 7, 1948, has been officially reported. Neither do we find that the order of the United States Circuit Court of Appeals made on July 16, 1948, has been officially reported. We are informed that copies of the following are in the record:

1. Judgment and opinion of District Court dismissing petition for habeas corpus dated July 7, 1948.

2. Order of District Court denying certificate of probable cause dated July 17, 1948.

3. Order of Judge of United States Circuit Court of Appeals (C. C. A. 5th) denying petition for certificate of probable cause dated July 16, 1948.

Opinions rendered prior to this proceeding are reported as follows:

Taylor v. State, 249 Ala. 130, 30 So. 2d 256, affirming conviction for rape.

Ex parte Taylor. Taylor v. State, 249 Ala. 667, 32 So. 2d 659, denying leave to petition for writ of error coram nobis.

Taylor v. Alabama, Supreme Court of the United States, No. 721, October Term, 1947, rendered June 21, 1948, 92 L. Ed. 1394, affirming coram nobis proceedings, supra.

II.

JURISDICTION

The petitioner has applied for writ of certiorari from this Court under provisions of Title 28, U. S. C. A., Section 1651(a), to review the judgment of the United States District Court for the Middle District of Alabama, Northern Division, rendered July 7, 1948, dismissing petitioner's petition for writ of habeas corpus, and the order of said District Court made on July 17, 1948, denying a certificate of probable cause for appeal; also to review the order made July 16, 1948, by a judge of the United States Circuit Court of Appeals, Fifth Circuit, denying a certificate of probable cause for appeal. See

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House v. Mayo (1944), 324 U. S. 42, 89 L. Ed. 739, 65 S. Ct. 517, rehearing denied 324 U. S. 886, 89 L. Ed. 1435, 65 S. Ct. 689.

III.

STATEMENT OF THE CASE

Petitioner, Samuel Taylor, was convicted in the Circuit Court of Mobile County, Alabama, for rape. He appealed to the State Supreme Court where his conviction was affirmed. *Taylor v. State*, 249 Ala. 130, 30 So. 2d 256. Taylor then applied to the State Supreme Court for leave to petition the trial court for a writ of error coram nobis, alleging for the first time that a confession used in evidence at his trial was obtained by force. The State Supreme Court denied leave to file a petition in the trial court. *Ex parte Taylor. Taylor v. State*, 249 Ala. 667, 32 So. 2d 659. On said coram nobis proceedings in the Supreme Court of Alabama, the petitioner submitted three affidavits in support of his petition alleging that the confession was obtained by force. The State, in opposition to this evidence, presented eight photographs of petitioner's body showing that petitioner was not mistreated at the time of the confession. The Alabama Supreme Court, in considering this evidence, together with other facts contained in the trial record, which contradicted petitioner's allegations of an involuntary confession, found that petitioner's allegations

(1) did not contain the probability of truth, and

(2) were unreasonable.

On certiorari, the United States Supreme Court affirmed the decision of the State Supreme Court. *Taylor v. Ala-*

bama, No. 721, October Term, 1947, decided June 21, 1948. —— U. S.——, 92 Ed. 1394.

Taylor then filed petition for writ of habeas corpus in the United States District Court. The allegations of this petition were substantially the same, if not identical, with the allegations in his former petition for writ of coram nobis. The petition was dismissed on motion of the State (representing the respondent, Warden of Kilby Prison). The grounds for dismissing the petition are stated in the judgment and opinion of the District Court dated July 7, 1948 (District Court Record). Certificate of probable cause for appeal was denied by the District Court, and later by a judge of the Fifth Circuit Court of Appeals.

Petitioner applied for certiorari in the United States Supreme Court to review:

1. The dismissal of his petition for habeas corpus in the District Court.

2. The denial of a certificate of probable cause by said District Court and the Circuit Court of Appeals.

The United States Supreme Court granted certiorari on December 13, 1948.

BRIEF AND ARGUMENT

I.

On habeas corpus proceedings, the petition includes those facts of which the court may take judicial cognizance.

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Cramer v. Washington,
168 U. S. 124, 42 L. Ed. 407.

Andersen v. Treat,
172 U. S. 24, 29, 31, 43 L. Ed. 351.

Wells v. United States,
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Rookard v. Huff,
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Slaughter v. Wright,
135 F. 2d 613.

Beard v. Bennett,
114 F. 2d 578.

II.

It is not improper for a federal district court to issue a rule to show cause when petition for writ of habeas corpus is filed.

Walker v. Johnson,
312 U. S. 275, 85 L. Ed. 830.

Ex Parte Yarbrough,
110 U. S. 651, 653, 28 L. Ed. 274.

Mooney v. Holohan,
294 U. S. 103, 111, 79 L. Ed. 791, 793.

III.

Where a state court has considered and adjudicated the merits of a petitioner's contentions, and the United States Supreme Court has reviewed the state court's decision, a federal court will not ordinarily re-examine upon writ of habeas corpus the questions thus adjudicated.

House v. Mayo,
324 U. S. 42, 89 L. Ed. 739, 65 S. Ct. 517.

White v. Ragen,
324 U. S. 760, 89 L. Ed. 1353.

Ex Parte Hawk,
321 U .S. 114, 88 L. Ed. 572.

It is not the function or purpose of habeas corpus proceedings to serve as an appeal or writ of error, nor to retry issues of fact or law previously adjudicated.

Glasgow v. Mayer,
225 U. S. 420, 429, 32 S. Ct. 753, 56 L. Ed 1147.

Re James Lincoln,
202 U. S. 178, 50 L. Ed. 984, 26 S. Ct. 602.

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Dorsey v. Gill,
148 F. 2d 857, cert. den. 325 U. S. 890, 89 L. Ed 2003, 65 S. Ct. 1580.

IV.

Although the doctrine of res judicata does not apply in habeas corpus cases, the district judge may exercise his discretion and give controlling weight to prior proceedings.

Salinger v. Loisel,
265 U. S. 224, 68 L. Ed. 989.

Wong Doo v. United States,
265 U. S. 239, 68 L. Ed. 999.

ARGUMENT

I.

When the petition for writ of habeas corpus was filed in the District Court, it could not be considered solely on the allegations included on the face of the petition. Besides those allegations reciting that petitioner was convicted by the use of an involuntary confession, and that he failed to disclose such alleged facts because of ignorance, are the further allegations reciting prior proceedings in the case including:

1. A trial in the Circuit Court of Mobile County, Alabama.
2. An appeal to the Supreme Court of Alabama.
3. Coram nobis proceedings in the Supreme Court of Alabama.
4. A review of said coram nobis proceedings by the United States Supreme Court.

Since these prior proceedings in the same case are referred to in the petition itself, the District Court could consider the record and opinions in such prior proceedings. *Cramer v. Washington*, 168 U. S. 124, 42 L. Ed. 407. The District Court was authorized to take judicial cognizance of all prior proceedings. *Anderson v. Treat*, 172 U. S. 24, 43 L. Ed. 351; *Wells v. United States*, 318 U. S. 257, 87 L. Ed. 746; *Beard v. Bennett*, 114 F. 2d 578; *Slaughter v. Wright*, 135 F. 2d 578.

In considering the action of the District Court, therefore, it should be kept in mind that the court was cognizant of all prior proceedings in the case.

II.

When a petition for writ of habeas corpus is filed in a district court, it is permissible for the court to

issue a rule to show cause instead of issuing the writ forthwith. *Walker v. Johnson*, 312 U. S. 275, 85 L. Ed. 830; *Ex Parte Yarbrough*, 110 U. S. 651, 28 L. Ed. 274; *Mooney v. Holohan*, 294 U. S. 103, 79 L. Ed. 791.

In *Walker v. Johnson*, supra, it was stated:

> "Since the allegations of such petitions are often inconclusive, the practice has grown up of issuing an order to show cause, which the respondent may answer. By this procedure the facts on which the opposing parties rely may be exhibited, and the court may find that no issue of fact is involved. In this way useless grant of the writ with consequent production of the prisoner and of witnesses may be avoided where from undisputed facts or from incontrovertible facts, such as those recited in a court record, it appears, as a matter of law, no cause for granting the writ exists. . . . . This practice has long been followed by this court and by the lower courts."

The procedure adopted by the District Court in issuing a rule to show cause was not without precedent.

III.

Where a state court has considered and adjudicated the merits of a petitioner's contentions, and the United States Supreme Court has reviewed the state court's decision, a federal court will not ordinarily re-examine upon writ of habeas corpus the questions thus adjudicated.

It is *not* intended here to argue that the doctrine of res judicata applies in habeas corpus cases. Neither do we intend to argue that the Federal District Court

was without jurisdiction to hear and determine this case. On the contrary, we do argue that in exercising a sound discretion, the District Court did not abuse such discretion in giving controlling weight to the prior proceedings in this case and in dismissing the petition for habeas corpus.

The allegations in the petition for writ of habeas corpus in the District Court were substantially the same allegations appearing in the prior petition to the Supreme Court of Alabama in coram nobis proceedings. Both petitions alleged in substance (1) that Taylor was convicted on the basis of a confession, (2) that the confession was obtained by force, and (3) that because of ignorance Taylor failed to disclose the facts to his trial counsel. (See District Court Record.) It should be added that, in the prior petition for coram nobis in the State Supreme Court, there were included the further allegations that, during the entire time of the trial and imprisonment, petitioner failed to disclose the fact of his mistreatment, not only because of ignorance but also because of fear of further reprisals. These specific allegations, together with an allegation concerning perjured testimony, which this Court found to be unsupported (*Taylor v. Alabama*, No. 721, October Term, 1947), were deleted from the petition filed in the District Court.

When this petition for habeas corpus was filed, it appeared from the face of the petition that there had been prior proceedings, coram nobis proceedings, in the State Supreme Court. The petition itself shows that Taylor had already presented the same grounds to the State Supreme Court and that the United States Supreme Court had affirmed the State Supreme Court's denial of relief. Under such circumstances, the District Court issued a rule to show cause why the writ of habeas corpus should not issue. We have shown that this procedure is not improper (respondent brief, p. 6, 7).

In response to the rule to show cause, the respondent filed a motion in the *nature of* a plea of res judicata. The motion simply called on the District Judge to take judicial cognizance of prior proceedings, to consider the results and findings of the prior proceedings in exercising his discretion to grant or refuse the discharge of Taylor. The District Judge decided to give controlling weight to the prior proceedings and refused to discharge the petitioner.

We contend that the District Court did not err in dismissing the petition. The District Court was presented with the same allegations which had been presented to the State Supreme Court. The State Court had already held a hearing on the merits. At that hearing, counsel had the opportunity to be heard. Petitioner's counsel submitted affidavits as proof in support of the allegations of his petition for coram nobis while the State introduced proof, consisting of photographs, in opposition to the allegations of the petition. The State Supreme Court, in considering the coram nobis case, referred to the trial record for further facts. There was nothing to prevent petitioner in that proceeding from presenting the State Court with more proof or evidence supporting the allegations of his petition.

As to the allegations in the petition for coram nobis, the Alabama Supreme Court concluded that ". . . the averments of the petition are unreasonable and that there is no probability of truth contained therein . . ." *Ex Parte Taylor. Taylor v. State*, 249 Ala. 667, 32 So. 2d 659. After a full review of this State decision, the United States Supreme Court held that:

1. Alabama did not deprive petitioner of due process of law in this case.

2. Alabama coram nobis procedure is adequate and constitutes due process of law in this case (*Taylor v. Alabama*, No. 721, October Term, 1947).

Clearly, the opinion of the United States Supreme Court decided that Taylor was not held by Alabama in violation of his rights under the due process clause of the Constitution. By what process of reason could the District Judge decide otherwise?

In the case of *Ex Parte Hawk*, 321 U. S. 114, 88 L. Ed. 572, it was stated:

> "Where the state courts have considered and adjudicated the merits of his contentions, and this court has either reviewed or declined to review the state court's decision, a federal court will not ordinarily re-examine upon writ of habeas corpus the questions thus adjudicated. Salinger v. Loisel, 265 U. S. 224, 230-232, 68 L. Ed. 989, 996, 997, 44 S. Ct. 519. But where resort to state court remedies has failed to afford a full and fair adjudication of the federal contentions raised, either because the state affords no remedy, see Mooney v. Holohan, supra (294 U. S. 115, 79 L. ed. 795, 55 S. Ct. 340, 98 A. L. R. 406), or because in the particular case the remedy afforded by state law proves in practice unavailable or seriously inadequate, cf. Moore v. Dempsey (261 U. S. 86, 67 L. Ed. 543, 43 S. Ct. 265); Ex parte Davis, 318 U. S. 412, 87 L. ed. 868, 63 S. Ct. 679, a federal court should entertain his petition for habeas corpus else he would be remediless. In such a case he should proceed in the federal district court before resorting to this Court by petition for habeas corpus."

Although the *Hawk case*, supra, was decided on the grounds that the petitioner had not exhausted his state

remedies, the above rule states that federal courts, on habeas corpus proceedings involving state prisoners, re-examine questions adjudicated only in two instances: (1) Where there is no state remedy. (2) Where the state remedy is unavailable or inadequate.

This Court, in *Taylor v. Alabama*, supra, excluded both of those instances. Taylor was not denied relief by Alabama because there was no remedy—the remedy of coram nobis was open to him. He was not denied relief because this remedy was inadequate—it was held to be adequate. He was denied relief because he could not convince the Alabama court that he alleged true facts. Relief was denied to Taylor not because of an infirmity in Alabama remedies, but because of infirmities in Taylor's allegations.

If the rule announced in *Ex Parte Hawk*, supra, is followed, the District Court did not err in refusing to re-examine the issues.

The rule was restated in *White v. Ragen*, 324 U. S. 760, 89 L. Ed. 1353, as follows:

> "If this Court denies certiorari after a state court decision on the merits, or if it reviews the case on the merits, a Federal district court will not usually re-examine on habeas corpus the questions thus adjudicated."

The case of *House v. Mayo*, 324 U. S. 42, 89 L. Ed. 739, 65 S. Ct. 517, rehearing denied 324 U. S. 886, 89 L. Ed. 1435, 65 S. Ct. 689, bears a close analogy to the present case. In that case, House, a state prisoner, applied for habeas corpus in a United States district court after the state courts had denied relief on application for habeas corpus and coram nobis and after the United

States Supreme Court had denied certiorari without opinion.

The District Court did not require a return and dismissed the petition without a hearing holding that the State Supreme Court had given consideration to the issues raised by the petition; further that the United States Supreme Court, in denying certiorari, indicated that no meritorious question was presented. As in the present case, certificate of probable cause was denied.

When this Court reversed the ruling of the District Court on certiorari, it pointed out that the decision of the District Court was not supported by the grounds assigned for it. This Court found that the State Court dismissed both habeas corpus and coram nobis proceedings without considering the merits and because the *state remedy sought was not the appropriate one under state law.*

In the case now before this Court, the decision of the Alabama Supreme Court was on the merits after a hearing and the consideration of evidence. Taylor's petition for coram nobis was not denied because it was not the appropriate one under state law, but because the State Court found that said petition did not contain a probability of truth.

In the present case, therefore, the District Court's decision is supported by the grounds assigned, namely, that the issues have been decided.

Neither can it be said that the District Court gave undue weight to the opinion of this Court in *Taylor v. Alabama*, supra, for that was a decision on the merits and unlike the mere denial of certiorari which occurred in the *House case*, supra.

Thus the rule recited in the *Hawk case*, supra, and restated in the *House case*, supra, is applicable to the present case:

> "It is true that where a state court has considered and adjudicated the merits of a petitioner's contentions, and this Court has either reviewed or declined to review the state court's decision, a federal court will not ordinarily re-examine upon writ of habeas corpus the questions thus adjudicated."

It is not the function or purpose of habeas corpus proceedings to serve as an appeal or writ of error nor to retry issues of fact or law previously adjudicated. *Glasgow v. Mayer*, 225 U. S. 420, 429, 56 L. Ed. 1147, 32 S. Ct. 753; *Re James Lincoln*, 202 U. S. 178, 50 L. Ed. 984, 26 S. Ct. 602; *Harlan v. McGowin*, 218 U. S. 442, 54 L. Ed. 1101, 31 S. Ct. 44, 21 Ann. Cas. 849; *Dorsey v. Gill*, 148 F. 2d 857, cert. den. 325 U. S. 890, 89 L. Ed. 2003, 65 S. Ct. 1580.

If this Court reverses the District Court and directs the District Court to hear evidence in this case, such a ruling will have the effect of overruling two well considered opinions of this Court: *Hysler v. Florida*, 315 U. S. 411, 86 L. Ed. 932, 62 S. Ct. 688; *Taylor v. Alabama*, supra. Those cases decided that due process is not violated when a state requires a prisoner to satisfy a bench of judges that he has a meritorious claim when such prisoner challenges the essential justice of his conviction. In both of those cases, this Court refused to interfere when a state prisoner, after trial and after appeal in state courts, could not convince the State Supreme Court that his claim or challenge to the essential justice of his conviction was meritorious. In both of those cases, this Court explored the very foundation of the State Court's denial of relief. In each case this Court found

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that the State Supreme Court was justified, on reasonable grounds, in refusing a retrial. Essentially, the holding in each case is that after trial, establishment of guilt, appeal, and affirmance a petitioner should not be allowed to "trifle with justice" by attempting to prove allegations in coram nobis proceedings when those allegations are patently unreasonable, insubstantial and lack the probability of truth. Certainly, a review of the very foundation of the State Court's decision by this Court affords ample assurance that petitions for coram nobis will not be arbitrarily dismissed. Something must be left to the State and the discretion of its Supreme Court.

If Taylor's petition for coram nobis in the Alabama Supreme Court was insubstantial, in view of the trial record, the affidavits to the petition, and the photographs shown as exhibits—if that petition was unreasonable and lacked a probability of truth—if that petition was another example of "trifling with justice," then the same is true of the later petition for habeas corpus in the District Court. Nothing new has been added—the petitions are substantially identical. Both the State Supreme Court and this Court have rejected the one. Will the District Court be compelled to hear evidence on the other?

Should the District Court be ordered by this Court to hear evidence on this petition for habeas corpus, such a proceeding will amount to an appeal from or retrial of the Alabama coram nobis proceedings. The issues are identical.

If the finality or conclusiveness of the judgment of the State Supreme Court on denial of relief in coram nobis proceedings may be re-litigated in a federal district court, then in fact the State Supreme Court has no power to reject a petition for coram nobis regardless of its false and insubstantial allegations. The power of the

State Supreme Court to deny such petitions without violating due process is asserted in both the *Hysler case*, supra, and the *Taylor case*, supra. A re-trial of the issue in the District Court would make both decisions ineffective.

IV.

Although the doctrine of res judicata does not apply in habeas corpus proceedings, the district judge may exercise his discretion and give controlling weight to prior proceedings.

The opinion of the District Judge dismissing the petition for habeas corpus recites that:

> "In the exercise of its discretion to grant or refuse the writ of habeas corpus, this court has given weight to the judgments, opinions and the matters referred to in the opinions of the Supreme Court of Alabama and of the United States Supreme Court in this case, and this Court is of the opinion that in view of said opinions and judgments, and the history of said case that a further hearing is not required by the Constitution of the United States."

This Court has held that on habeas corpus proceedings a court should not apply the strict rule of res judicata, and that each petition should be disposed of "in the exercise of a sound judicial discretion, guided and controlled by a consideration of whatever has a rational bearing on the propriety of the discharge sought. Among the matters which may be considered, and even given controlling weight, are . . . (b) a prior refusal to discharge on a like application." *Salinger v. Loisel*, 265

U. S. 224, 68 L. Ed. 989; *Wong Doo v. United States*, 265 U. S. 239, 68 L. Ed. 999.

It is urged that the District Court was entitled to give much, and even controlling, weight to the decision of the Alabama Court denying petition for coram nobis and the decision of this Court reviewing that decision. We have already pointed out that the petition in the State Court and that in the Federal Court were substantially the same.

CONCLUSION

Samuel Taylor has been tried, convicted of rape, and has been given the death penalty. His conviction has been affirmed by the Supreme Court of Alabama. The conviction has not been reversed. Taylor has, by proper state procedure, claimed that his conviction was in violation of civilized standards, in that a confession extorted by force was used against him. Alabama has decided that the claim is not worthy of belief. The United States Supreme Court has decided that Alabama's rejection of the claim was not unreasonable. We respectfully submit that the Fourteenth Amendment requires no further inquiry, and that this Court should affirm the judgment of the District Court dismissing the petition for habeas corpus.

Respectfully submitted,

A. A. CARMICHAEL,
Attorney General of Alabama,

BERNARD F. SYKES,
Assistant Attorney General,
Counsel for Respondent.

I hereby certify that I have forwarded a copy of the foregoing brief to Thurgood Marshall, 20 West Fortieth Street, New York, N. Y., attorney for petitioner, on this the 6th day of January, 1949.

A. A. CARMICHAEL,
Attorney General of Alabama,
Counsel for Respondent.